FILE COPY

Office - Supreme Court, U. S.
FILED
OCT 25 1943
CHARLES ELMORE CROPLEY
CLERK

No. 396

IN THE

Supreme Court of the United States

October Term, 1943

FRED M. VINSON, DIRECTOR OF ECONOMIC STABILIZATION, BY PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Petitioner*,

v.

WASHINGTON GAS LIGHT COMPANY, *Respondent*.

FRED M. VINSON, DIRECTOR OF ECONOMIC STABILIZATION, BY PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Petitioner*,

v.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, *Respondent*.

PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Petitioner*,

v.

WASHINGTON GAS LIGHT COMPANY, *Respondent*.

PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Petitioner*,

v.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, *Respondent*.

BRIEF IN OPPOSITION OF RESPONDENT WASHINGTON GAS LIGHT COMPANY TO PETITION FOR WRIT OF CERTIORARI.

E. BARRETT PRETTYMAN
STODDARD M. STEVENS, JR.
F. G. AWALT
C. OSCAR BERRY
RAYMOND SPARKS
Attorneys for Respondent Washington Gas Light Company.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

TABLE OF CONTENTS.

	Page
Opinions Below	2
Jurisdiction	2
Statutes and Orders Involved	2
Statement	2-11
Questions Presented	11-12
Summary:	
Question 1—Fullness and Fairness of the Hearing	12-17
Questions 2, 3 and 4—The Duty of the Commission to Find a Rate Increase Necessary	17-20
Question 5—Items of Expense	20-21
Conclusion	21

CITATIONS.

CASES:

Canadian River Gas Company case, 43 P. U. R. (N. S.) 205, 229	13
Federal Power Comm. v. *Natural Gas Pipeline Co.*, 315 U. S. 575, 607; 35 P. U. R. (N. S.) 41, 54	13
Hope Natural Gas Company case, 44 P. U. R. (N. S.) 1, 33; 47 P. U. R. (N. S.) 129, 135	13
Panhandle Eastern Pipe Line Company case, 45 P. U. R. (N. S.) 203, 25	13
W. M. and A. Motor Lines adv. *Henderson, Adm.*, 132 F. (2d) 729, *cert. den.*, 318 U. S. 779	8

STATUTES:

Emergency Price Control Act of 1942 (56 Stat. 23, C. 26, January 30, 1942):	
Section 302(c)	5, 19, 23

Page

Act of October 2, 1942, c. 578, 56 Stat. 765, 50 U. S. C. (App.), Supp. II:

Section 1 ..... 6-7, 23
Section 2 ..... 19, 24
Section 7(c) 19, 24

D. C. Code (1940):

§ 43-305 ..... 15, 24
§ 43-306 ..... 15, 24
§ 43-317 ..... 3, 24

MISCELLANEOUS:

Executive Order 9250 (7 Fed. Reg. 7871) 8, 26

Resume of Legislative History of Proviso to Section 1 of the Act of October 2, *supra* 27-32

IN THE

Supreme Court of the United States

October Term, 1943

No. 396

FRED M. VINSON, DIRECTOR OF ECONOMIC STABILIZATION, BY PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Petitioner*,

v.

WASHINGTON GAS LIGHT COMPANY, *Respondent*.

FRED M. VINSON, DIRECTOR OF ECONOMIC STABILIZATION, BY PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Petitioner*,

v.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, *Respondent*.

PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Petitioner*,

v.

WASHINGTON GAS LIGHT COMPANY, *Respondent*.

PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Petitioner*,

v.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

BRIEF IN OPPOSITION OF RESPONDENT WASHINGTON GAS LIGHT COMPANY.

OPINIONS BELOW.

The opinion of the Court of Appeals for the District of Columbia (R. II, 428-443)[1] and the dissenting opinion of Justice Miller (R. II, 443-449) are not yet officially reported, but are reported at 50 P. U. R. (N. S.) 33 *et seq.* The opinion of the District Court (R. I, 15-20) is reported at 48 F. Supp. 703. The findings and opinion of the Public Utilities Commission of the District of Columbia (R. I, 39-57) and the dissenting opinion of Commissioner Hankin (R. II, 271-317) are reported at 46 P. U. R. (N. S.) 1 *et seq.*

JURISDICTION.

The judgment of the Court of Appeals for the District of Columbia was entered on July 26, 1943 (R. II, 451). The jurisdiction of the Court rests on Section 240(a) of the Judicial Code (as amended by the Act of February 13, 1925) and on 28 U. S. C. § 350. See also D. C. Code (1940) § 43-705.

STATUTES AND ORDERS INVOLVED.

The pertinent parts of the statutes involved, as well as the pertinent parts of the orders involved, are set forth in the Appendix, *infra*, pp. 22-25.

STATEMENT OF THE CASE.

Certain facts antecedent to the present proceeding are material. In December, 1935, the Commission[2] concluded

---

[1] Record references are as follows: "R. I", Appendix to Brief of Respondent Washington Gas Light Company in Court of Appeals; "R. II", Appendix to Brief of Petitioners Administrator and Director in Court of Appeals; "Tr. I", original Transcript of Record in Nos. 8501 and 8503 in Court of Appeals, on file in this Court; "T. II", Original Transcript of Record in Nos. 8502 and 8504 in Court of Appeals, on file in this Court.

[2] The parties involved in this proceeding are referred to herein as follows: Petitioner Price Administrator, "Administrator"; Petitioner Director of Economic Stabilization, "Director"; Respondent Public Utilities Commission of the District of Columbia, "Commission"; Respondent Washington Gas Light Company, "Company".

a valuation of the Company's property and a rate case which had consumed three and one-half years of time, cost $750,000, yielded 12,000 pages of testimony and 260 exhibits, and had resulted in 111 printed pages of findings. The Commission found a rate base and a rate of return, prescribed certain accounting procedure, and incorporated in its order a "sliding scale arrangement" as authorized by its statute.[3] This "sliding scale" consists of an annual audit of the accounts of the Company, an annual hearing in respect to its rates, an annual adjustment of the rate base by net additions at actual cost, and an annual rate order in which the rates for the ensuing "rate year" (September 1-August 31) are computed upon the basis of the past year's experience adjusted to approach the stated fair return.[4] The noteworthy features of the arrangement are

---

[3] D. C. Code (1940) § 43-317, p. 24, *infra*.

[4] Basically, the plan underlying the sliding scale arrangement (see Order 1458; Tr. I, 262-280) was the establishment of an initial rate base ($21,000,000, exclusive of working capital) for the Company as of June 30, 1935, and a primary rate of return (6½ per cent), together with a schedule of rates, effective from December 13, 1935, to August 31, 1936, and provisions for subsequent annual adjustments of the rate base and the schedule of rates designed to keep the net operating earnings of the Company at an approximation of the primary rate of return on the adjusted rate base.

Under the terms of this order, the Commission, after giving due notice thereof, holds annual hearings on the application of the sliding scale arrangement to the results of the operation of the Company for the preceding year. As a matter of practice, the annual hearing, which is held in August of each year, is preceded by an audit of Company's affairs by the Commission's staff. At the hearing, the Commission receives evidence from its staff experts, witnesses for the Company, and witnesses for any person or association who may have become parties to the hearing under the Commission's rule permitting intervention.

On the basis of the facts found from the evidence submitted at the annual hearing, the Commission determines, pursuant to the "sliding scale" procedure established in the Order 1458, *supra*, the schedule of rates to be effective for the ensuing *Rate Year* (September 1 to August 31). First, the Commission finds the rate base as of the *Adjustment Date* (the June 30th preceding the beginning of the *Rate Year*), by adding to the initial rate base the additions,

that the rate base works gradually toward complete actual original cost, rates to consumers increase or decrease only as costs of operation increase or decrease, the rates are predicated upon actual experienced expenses and revenues and not upon estimates, the return to the Company is kept currently at approximately the stated level, and the method is simple, expeditious and inexpensive. Every year since 1935, until 1942, the rates have either been decreased or remained unchanged. This proceeding involves the first increase.

ORIGIN OF PRESENT PROCEEDING. The present proceeding was the regular annual audit and hearing to determine the rates of the Company for the rate year beginning September 1, 1942. At the time the case began (August, 1942; R. I, 68), the Administrator had no responsibility for, or right of participation in, the regulation of public utility rates. The Emergency Price Control Act, from which he derived his authority, expressly provided, "Nothing in this Act shall be construed to authorize the regulation of * * * rates charged by any common car-

---

at cost, to the Company's properties from June 30, 1935, to the Adjustment Date, and subtracting therefrom, also at cost, retirements from the Company's properties for the same period. Next, the Commission determines the *Net Amount Available for Return for the Test Year* (the year ending on the *Adjustment Date*). This is done by subtracting designated expenses for the *Test Year* from Respondent's Gross Operating Revenue, as computed according to the provisions of the order. The rate base as of the *Adjustment Date* is then divided into the *Net Amount Available for Return for the Test Year*. The resulting percentage is the rate of return earned for the test year. If the rate of return is in excess of, or lower than, the primary rate of return of 6½%, gas rates are adjusted, effective for the ensuing *Rate Year*, to effect a decrease or increase, as the case may be, in net operating earnings. The change in gas rates is measured by specified percentage of the rate base, depending upon the amount of such excess or deficiency. Revised rate schedules are then established by order of the Commission, for the ensuing *Rate Year*.

rier or other public utility."[5] Nevertheless, his Counsel was present by invitation at the pre-hearing conference in this proceeding (R. I, 84), and when the formal hearing began, the first order of business was the granting of his petition to intervene (R. I, 69, 72, 73). The reason for this action was soon made clear by the Commission. The Chairman stated, "We must consider existing conditions and the bearing of those conditions upon the question before us, * * *. That is where the O. P. A. comes in, in my estimation, to give us the benefit of their views regarding the granting or refusing to grant a rate increase in view of general economic conditions, to prevent inflation. We are just as interested in that as O. P. A. is. You have made a study, presumably, and you have something which will be of value to the Commission in making up its mind on the second point." (R. I, 132.)

Participation by O.P.A. Counsel for the Administrator was thereafter active throughout the proceeding. He participated in the discussion of almost every point which arose. He at first reserved his cross-examination (R. I, 95, 96, 100, 101, 102) and at his convenience later cross-examined almost every witness (R. I, 100, 111-121, 130, 142, 143, 144; Tr. I, 739, 779-904, 975-976, 1094-1098, 1159-1171, 1186-1188, 1197-1211, 1331, 1359-1368). He made many arguments. He requested postponements from time to time (Tr. I, 752, 754, 900, 1143, 1561), all of which were granted, although not always for the time requested (R. I, 110, 121, 130-131, 220; Tr. I, 774, 915, 988-989, 1144, 1575). He presented three witnesses: the Assistant Director of Research of the Office of Price Administration (R. I, 151), who testified as to the policies and program of the Administrator; the Chief Examiner of Accounts, Division of Finance and

[5] Clause (2) of Section 302(c) of the Emergency Price Control Act of 1942, 56 Stat. 29, 36, 50 U. S. C. App. (Supp. II) § 942(c). Administrator Henderson himself had told Congress that public utility rates should be left to the several Federal and State regulatory commissions, long established and expert in this complicated field (Hearings on H. R. 5479, 77th Cong., 1st Sess., Pt. I, pp. 54-55, 144, 444, 626).

Statistics, Bureau of Accounts, Finance and Rates of the Federal Power Commission, on loan to the Office of Price Administration for the purpose of this proceeding (R. I, 158); and an Assistant Business Analyst from the Office of Price Administration (R. I, 169). He recalled, as his own, witnesses who had testified for the Commission and the Company (R. I, 220; Tr. I, 1143). He filed a brief and a supplemental brief. At the end of it all, he stated (R. I, 226):

> "I want to say this: We think the record is clear now that the Commission's order is inflationary in character."

Thus he indicated his own satisfaction with the nature and extent of the evidence which he had presented on that point.

During the course of the hearing, an exhaustive inquiry was made into the operating expenses of the Company. Hundreds of pages of testimony were taken concerning such matters as costs of advertising, demonstration expenses, promotional expenses, officers' salaries, employees' welfare costs, services on customers' premises and other items (Tr. I, 619-1210). Record was made of rising wage costs and fuel costs, two of principal items of expense. Inquiry was also made into the matter of taxes—normal taxes, excess profits taxes, capital stock taxes, war taxes (Tr. I, 830-973, 1119). The record of prior proceedings concerning the finances of the Company, its financial structure, methods, costs, and needs were made part of the record. (Ex. 3; RI, 95.)

The hearing was finished and closed on September 14 (R. I, 181), and briefs were filed. Thereafter, the case was reopened and again closed on September 30.

Act of October 2, 1942. On October 2 Congress passed and the President approved an Act,[6] which in the proviso to Section 1 thereof reads:

> "* * * no common carrier or other public utility shall make any general increase in its rates or charges which

[6] 56 Stat. 765, 50 U. S. C. (App.), Supp. II, §§ 961-971.

were in effect September 15th, 1942, unless it first gives thirty days' notice to the President or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase."

It is noteworthy that the Act in terms imposed no duty upon the Commission, and that the duties imposed upon the Utility were to give notice and to consent to intervention by the President's representative.

Petitioners do not refer to the legislative history of the proviso. We have printed the pertinent part of the debate thereon in the Appendix.[7] When the bill which became the Act of October 2, 1942, was before the Senate, Senator Norris of Nebraska expressed the view that the President should have the right to veto public utility rate increases, and he presented an amendment to that effect. It passed the Senate and went to Conference. The Conferees refused to accept the amendment, and the language now in the statute, quoted hereinabove, was substituted. When the Conference report was submitted to the Senate, Senator Norris explained in careful phraseology that the substituted language (now in the statute) "does not, technically, afford any relief whatever." He explained that under that proposed language, "When the President's representative appears before the tribunal having jurisdiction to fix or increase utility rates, he could say—and that is about all he could do—that if the requested increase were granted, it would tend to increase the cost of living, and hence throw out of gear the entire machinery designed to prevent inflation." But, Senator Norris pointed out, the proposed language would permit the President's representative to appear as an intervener in these cases, and would, moreover, have "a great moral effect" upon the regulatory commissions. The Senator said, "I myself feel disposed to accept this language." That explanation was concurred in by the Senator in charge of the bill, and with that explana-

[7] See pp. 26-31, *infra*.

tion, to which there was no dissent, the Senate adopted the Conference report.

SEQUENCE OF EVENTS AFTER OCTOBER 2, 1942. October 3 the President created the office of Director of Economic Stabilization, and designated the Director, his representative, to receive the notices provided for by the proviso to Section 1 of the Act of October 2.[8] October 7 the Director took office. October 13 the Commission handed down its order in this case (R. I, 55). There was at that time considerable doubt as to whether the Act of October 2, above quoted, applied to a case closed before its enactment. The Interstate Commerce Commission held that it did not, and the point was not decided until the Court of Appeals for the District of Columbia passed upon it,[9] reversing the I. C. C., and this Court on April 5, 1943, denied certiorari.[10] But the Commission in the present case took the view that the Act did apply, and in its order called to the attention of the Company the requirements of the Act and quoted the applicable provisions thereof (R. I, 56).

Thereupon, on October 15, the Company served upon the Director the required notice (R. I, 188). October 19 the Director, by the same Counsel who had theretofore represented the Administrator, petitioned to intervene (R. I. 57). October 23 the Commission granted the petition, reopened the case and set further hearing for November 2 (R. I, 184). October 30 the Company formally consented to the intervention (R. I, 191). November 4 the hearing, postponed from November 2 at the request of the Director (R. I, 215), was held (R. I, 220-229). November 9 the Commission denied the Director's motion to vacate the order (R. I, 66-67). November 16, thirty days after the statutory notice, the Company put the new rates into effect (Tr. II, 174), and with prospective operation only. The Order of Octo-

---

[8] Executive Order 9250, 7 Fed. Reg. 7871 (see p. 25, *infra*).

[9] *W. M. and A. Motor Lines* adv. *Henderson, Adm.*, 132 F. (2d) 729.

[10] 318 U. S. 779.

ber 13, 1942, will expire when the Commission almost any day now, issues its order establishing the schedule of rates for the current *Rate Year* (September 1, 1943, to August 31, 1944), pursuant to hearing held from August 31 to September 11, 1943.[11]

EXTENT OF CONSIDERATION BY THE COMMISSION. The Commission in its Findings and Opinion (R. I, 39, 40) stated its responsibilities as two, first to ascertain whether a rate increase was indicated by the ordinary processes of ratemaking, and second "to give recognition to existing conditions and the bearing of such conditions upon the question before us. In addition to the present economic situation, which admittedly is of vital importance, we must also consider the credit position of the Company and its ability to finance its requirements for plant expansion and to render adequate service to the consumers in the District of Columbia."

The staff of the Commission had testified "that computations in accordance with the sliding scale arrangement indicated that the Company was entitled to a rate increase of $324,718.06." The Company claimed an increase of $381,597. (RI, 40-41.)

The Commission considered in detail certain disputed expenses (RI, 41-44, 45-48). It considered and disallowed excess profits taxes as a deduction for rate purposes "in order to prevent the direct inflationary effect which [the allowance of such taxes] would invite." (RI, 49), although it at the same time recognized the equity of the Company's contention that, if the Commission had been in a position (a quorum was lacking) to approve its issuance of proposed preferred stock, there would have been no excess

[11] In its 1942 order the Commission included a provision to the effect that if any portion of the rate increase should result in the payment of excess profits taxes by the Company, such part of the rate increase should be refunded to the gas customers (R. I, 49). Because of the operation of this provision, early in 1943, the Company refunded to its customers all of the rate increase which was billed between the date on which the rates were put into effect, November 16, 1942, and December 31, 1942.

profits tax (RI, 44-45). As to Federal income taxes, the Commission decided to allow a deduction of only 31 per cent instead of the 40 per cent tax levied by the Revenue Act of 1942 (RI, 48-50). This decision was reached by the Commission after it had given consideration to the question whether in light of "present-day conditions . . . accruals for Federal income taxes, at rates considerably higher than rates in effect in previous years, should be allowed in their entirety for rate-making purposes." (R. I, 48).

Then the Commission came to the consideration of "the financial position of the Company and particularly its ability to secure capital economically for the purpose of expanding its plant to meet the growing demands for gas service." The Commission said, "The District of Columbia has been characterized as the No. 1 defense area of the United States, and it is vital that the Company be in a position at all times to provide adequate service." (R. I. 50-51).

The Commission then pointed to the fact that although the Company had offered for sale 40,000 shares of $5.00 cumulative preferred stock in an effort to finance its war construction necessities, it had been successful in selling only 18,206 shares. The Company's income deductions and preferred dividends had been earned 1.88 times in 1941 but only 1.75 times in the twelve months ended April 30, 1942, and 1.67 times for the twelve months ended July 31, 1942. For 1941 the earnings per share of common were $2.24, for the twelve months ended April 30, 1942, were $1.96, and for the twelve months ended July 31, 1942, were $1.80. Labor costs had increased by more than $300,000 (*Idem.*)

Then the Commission "after careful consideration of all factors having a bearing on this case" concluded by granting an increase of $201,424.74. The rate of return thus allowed was 5.57 per cent. The Commission said, "This increase in rates will not restore the earnings of the Company to the level obtaining prior to the decline, nor is it the intent of the sliding scale arrangement to do so. It will, however, tend to arrest the decline and preserve the principles

inherent in the sliding scale arrangement, on which, as heretofore stated, the credit position of the Company depends in large measure." (R. I, 51-52.)

The Commission analyzed the effect of the increase upon individual customers, pointing out that the average was 3 cents per month.

APPELLATE PROCEEDINGS. The District Court, upon appeal by Petitioners, reversed (R. I, 20-21) the Commission, but it later developed that at the time of entering his judgment, the Justice of that Court had not seen, or even been aware of, the record of the proceeding before the Commission. He later wrote (R. I, 29), "It is with some chagrin that I admit the certified record of the proceedings of the Public Utilities Commission was not physically brought to my attention upon the appeal."

The Court of Appeals, at the conclusion of an exhaustive examination into every aspect of the case, reversed the District Court. The opinion is in the record in full, (R. II, 428-443) and is not repeated or summarized here. In essence, the Court held that the power to regulate public utility rates had been left by Congress to the various established regulatory commissions, that in this proceeding the Commission had not only permitted but sought the assistance of the Petitioners, that both the terms and intent of the Act of October 2 had been fully met, that the Commission had given very practical heed and effect to present-day economic conditions and the national program against inflation, and that its findings were supported by conclusive evidence.

QUESTIONS PRESENTED BY PETITIONERS.

Petitioners ask certiorari for the consideration of five questions (Pet. 3-4), and in the statement of those questions show that they wish the Court to review as if upon appeal the entire proceedings below, both in the Courts and before the Commission. In Question 1 Petitioners allege that they were not afforded a full and fair hearing. Questions 2, 3 and 4 are interrelated and are summarized by Petitioners (Pet.

10) as raising the question whether under present conditions the regulatory authorities are under a legal duty, imposed by their own statutes and by the Act of October 2, 1942, to deny every utility rate increase as inflationary, and therefore as unjust and unreasonable, in the absence of a clear showing that the increase is necessary. Question 5 concerns two items of expense.

Respondent says, and the opinion of the Court of Appeals shows, that none of the questions posed by Petitioners as substantive principles of law or propositions of general importance arise upon the record in this particular case; the Petition shows that Petitioners merely disagree with the expert regulatory judgment of the Commission as to what matters presently required inquiry and as to the factual necessity for an increase in rates.

Petitioners nowhere point to error in the opinion of the Court of Appeals.

Question 1—The Fullness and Fairness of the Hearing.

Petitioners specify the particulars in which they allege that the hearing fell short of being full and fair, listing them (a) to (e), inclusive (Pet. 11-12).

(a) Petitioners complain that the Commission restricted the scope of the hearing. For what scope did Petitioners contend? At one point they asked that the proceeding be "without restriction as to the type of evidence to be presented or otherwise limiting the scope of further hearing." (R. I, 63.) This was a plea for the complete abdication of the Commission and for complete chaos of proceeding. That request was denied, and the propriety of the denial is plain without elaboration.

Later Petitioners contended (R. I, 207) that the Commission must redetermine in this proceeding the proper rate base, fair operating expenses, including depreciation, other proper operating expenses, allowable Federal taxes, and the fair rate of return. The Commission made an exhaustive inquiry into operating expenses and taxes. It declined to

insert as issues in this proceeding the rate base, the method of computing depreciation, and the rate of return. The propriety of the refusal is made apparent, we submit, by the discussion of these items in (b), (c), and (d) below.

The Commission did not, as Petitioners state, rule "that the scope of the hearing was restricted by the antecedent sliding scale arrangement" (Pet. 11). The Commission repeatedly stated (R. I, 123, 132-133; cf. R. I. 40) that the problem before it was in two parts: (1) the rates indicated by the sliding scale arrangement, i.e., the normal rate-making process for this Company; and (2) if an increase were thus indicated, whether such increase was in conflict with the national stabilization program.

(b) Petitioners complain (Pet. 11) that the Commission refused to reconsider the established rate of return, which was 6½ per cent. Let it be well understood that the reference by the Commission to 6½ per cent (R. I, 52) as the fair rate of return was purely theoretical. The Company had earned 4.87 per cent for the past year, and the Commission allowed 5.57 per cent for the ensuing year. The Commission did not allow 6½ per cent. It merely said that such would be a fair rate of return.

The actual cost of money to this Company, as the Commission well knew, was slightly more than 6½ per cent. The Federal Power Commission in all of its recent gas company cases had held 6½ per cent to be the fair rate of return.[12] Moreover, the applicable rule is thus stated:

> "The rate of return to be allowed in any given case calls for a highly expert judgment. That judgment has been entrusted to the Commission. There it should rest."[13]

---

[12] *Natural Gas Pipeline Co.* case (35 PUR (NS) 41, 54; 315 U. S. 575, 596); *Hope Natural Gas Company* case (44 PUR (NS) 1, 33; 47 PUR (NS) 129, 135); *Panhandle Eastern Pipe Line Company* case (45 PUR (NS) 203, 215); *Canadian River Gas Company* case (43 PUR (NS) 205, 229).

[13] *Federal Power Comm.* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, 607.

No fact and no law was proffered by Petitioners to indicate any impropriety in the rate of return. They relied solely upon an unfortified plea for reexamination.

(c) Petitioners complain (Pet. 12) that the Commission's action in respect to depreciation "appears to disregard the reasoning in this Court's opinion" in *Federal Power Comm.* v. *Natural Gas Pipeline Co., supra.* The "reasoning" which the Commission's action "appears to disregard" is not specified, and we are unable to recognize it. The *decision* of the Court in that case was that the choice of a method of computing depreciation is for the Commission. The holding of the Court of Appeals in this case was in accordance with that decision.

(d) Petitioners complain (Pet. 12) that "The Commission rejected Petitioners' request, directed to show that no hardship was being imposed on the Company, that the Commission consider data (already in the Commission's records) which indicated that the rate base was in excess of the original investment." Originally, at the hearing before the Commission, Petitioners contended that the Commission was required, if so requested, to redetermine, "What is the proper rate base?" (R. I, 207.) That contention is now apparently abandoned.

Petitioners are now notably vague in describing what they would have the Commission do. They assert that they neither suggest nor contemplate a "protracted rate hearing" or a "full-scale valuation hearing" (Pet. 12). They point to no probable public benefit from a reexamination of the rate base. They say that the Commission must "consider", but they do not suggest the manner or the process by which that consideration would be had, or what tangible evidence of "consideration" must be made to satisfy their contention. Nowhere is it shown that the Commission did not consider the "data already in the Commission's records". The Commission heard the arguments of Petitioners' Counsel (R. I, 83-84, 206-207) and the long statement of its own Commissioner Hankin (R. I, 74-80; cf. R. I. 97-99) advo-

cating the reexamination of the rate base and, after a meeting in executive session upon the subject, declined to inject that issue into this proceeding (R. I, 97). Presumably, its consideration and action were upon the data already in its records plus the allegations of fact and contentions of law presented in this proceeding.

Petitioners do not describe in any fashion the "data already in the Commission's records" which they insist the Commission should consider. They merely say that the data "indicated that the rate base was in excess of the original investment". They do not indicate in their Petition what the excess was. Throughout the proceedings the only claim of that nature was that the item of land was included in the rate base at its fair value in 1935 instead of at its original cost. With that sole exception, no claim was made that any item in the rate base of $28,000,000 was in excess of the original investment. Even so, Petitioners do not advance to this Court the proposition that the Commission is compelled by law to fix the rate base at the original investment. Indeed they could not, for a local statute governs that matter in this proceeding.

As the Court of Appeals pointed out (R. II, 441), the statute in the District of Columbia, which is an Act of the Congress of the United States, requires that the Commission value the property of public utilities "at the fair value thereof at the time of said valuation"[14] That statute further specifies that the Commission must consider not only cost but also the amount of money it would require to secure the right of way, etc., "and to replace all the physical properties belonging to the public utility".[15] So this Commission could not, even if it wished to do so, fix the rate base at the amount of the original investment, unless that amount happened to coincide with the fair value of the property at the time of the valuation.

---

[14] D. C. Code (1940) § 43-306 (see p. 24, *infra*.)

[15] D. C. Code (1940) § 43-305 (see p. 23, *infra*).

(e) The fifth and last specification of complaint upon this point (Pet. 12-13) appears to contain three elements. The first is a reference to the date, September 1, 1942. In its order the Commission mentioned this customary date for the beginning of a new Rate Year (R. I, 56), but immediately, in the next sentence, said, "However, the Commission directs the attention of the Company to the provision contained in the Act approved October 2, 1942, * * * which reads as follows:" and quoted the new statute. The fact is that the new rates did not go into effect until November 16, thirty days after the statutory notice had been given.

Petitioners next say that the Commission's first order was issued before the 30 days' notice required by the Act of October 2 was given "petitioner". The facts are that the Administrator had been a party to the proceeding since the first day of the hearing, and that when the Director came into existence the case was reopened, the Director intervened, further hearings were held for his benefit, and the increased rates did not go into effect until after the expiration of 30 days from the giving of the notice.[16]

Petitioners next refer to the order of the Commission granting the Director's petition to intervene for the purpose of showing "the inflationary effect, if any" of the proposed increase (R. I, 62-63). In his petition the Director said that he had a "right to appear in this proceeding for the purpose of presenting evidence or argument concerning the comprehensive national economic policy developed in accordance with the provisions of the Emergency Price Control Act of 1942 as amended by the Act of October 2, 1942, and the effect thereon of increases in rates and charges of common

---

[16] As indicated by the Court below, this contention of the Petitioners raises but a technicality which does not obscure the fact that the requirement of notice was complied with in this case. The Court said (R. II, 431): "In short, the contention does not go to the substance of the matter and the provisions of the amendatory Act requiring prior notice and consent to intervention by the Presidential agency were complied with."

carriers or other public utilities." (R. I, 59.) The Commission accorded him the full right which he asserted. The fact is that the order was almost the same in language and precisely the same in meaning as the Director's petition. Moreover, the order was in precise accord with the intent of the Act made clear beyond possibility of dispute by its legislative history, to which reference has already been made.

Questions 2, 3 and 4—The Duty of the Commission to Find a Rate Increase Necessary.

Petitioners summarize these questions (Pet. 16) as being whether the Commission was under a legal duty, imposed by its own statute and by the Act of October 2, 1942, to deny any rate increase as inflationary, and therefore as unjust and unreasonable, in the absence of a clear showing that the increase was necessary.

The complete answer to this contention in this case is that the Commission found that the increase was necessary and stated the reasons upon which it made that finding. At a later point in their petition, Petitioners seem to acknowledge that fact and there contend (Pet. 16) that the considerations advanced by the Commission as indicating the necessity for the increase are inadequate.

In its Findings and Opinion, which we have detailed hereinabove,[17] the Commission found that there was a vital necessity for adequate gas service in Washington as the Nation's No. 1 Defense Area, that the Company had failed in its effort to finance its war construction program, that the Company faced declining net earnings and increasing expenses and that an increase in rates which would "tend to arrest the decline" was necessary to protect the credit of the Company and to enable it to finance its war needs. This phase of the Commission's order was considered at length in the opinion of the Court of Appeals, and the Court concluded:

[17] See pp. 9-11, *supra*.

> "Manifestly the order of the Commission was issued only after a deliberate and careful study of the factors affecting the business of the utility in wartime Washington without a trace of hasty or arbitrary conduct on the Commission's part. * * * The conservatism of this action is demonstrated by the finding of the Commission, based on convincing evidence, that the Company could not finance its needs and install the extensions required to fill the demands of the 'No. 1 Defense Area of the United States', unless the decline in earnings was arrested and the principles of the sliding scale arrangement, on which the credit position of the Company depended, were preserved." (R. I, 438.)

And again the Court said:

> "It must be borne in mind that there was no refusal on the part of the Commission to receive evidence with regard to the inflationary effect of an increase of rates. On the contrary the Commission expressed a desire to hear the Price Administrator and urged him to present any evidence in his possession on this point. Moreover, the Commission gave heed to present day conditions by reducing the allowance which the sliding scale would have justified and at the same time ordered a small increase in rates in order to buttress the financial condition of the Company and enable it to satisfy the abnormal demands upon it." (R. I, 443.)

Petitioners separate their contention on this point, but when sections 1 (Pet. 9-10) and 4 (Pet. 16-20) of "Reasons for Granting the Writ" are read together, it is clear that Petitioners' contention is not that no showing of necessity was made, but that the findings of the Commission as to necessity were inadequate. Those findings were supported by substantial evidence; they were not arbitrary. Unless the determination of public utility rates has been confided to some authority other than the Commission, or unless some authority superior to the Commission has imposed a standard for determining the necessity of a rate increase, these findings of this Commission cannot be disturbed by the Court.

Petitioners frankly confess their inability to describe "the criteria of necessity" (Pet. 14, n. 6). They say that the provision in Section 1 of the October Act, namely "necessary to aid in the effective prosecution of the war or to correct gross inequities" (which by its terms applies to prices and wages but not to utility rates) is "satisfactory" and "give(s) apt direction to administrative judgment". But even Petitioners do not advance this definition as a compulsory limitation upon administrative judgment.

Congress not only intended abstractly that regulation of utility rates should be left in the hands of the expert regulatory commissions, state and federal, but it evidently affirmatively meant exactly that. It inserted in the Price Control Act a specific exclusion of those rates from control under that Act.[18] And in the October Act, it *twice* repeated the limitation included in the earlier Act, so as to make the matter not only clear but also certain. It said, in Section 2 of the October Act,

> "* * * The President may suspend the provisions of sections 3(a) and 3(c), and clause (1) of section 302(c), of the Emergency Price Control Act of 1942 to the extent that such sections are inconsistent with the provisions of this Act, but he may not under the authority of this Act suspend any other law or part thereof."[19]

(The utility exclusion was *Clause (2)* of Section 302(c).) And again it said in that same Act,

> "Nothing in this Act shall be construed to invalidate any provision of the Emergency Price Control Act of 1942 (except to the extent that such provisions are suspended under authority of section 2) * * *."[20]

Petitioners contended in the Court of Appeals (cf. R. II, 433 with R. II, 447) that the first two sentences of Section

---

[18] Clause (2) of Section 302(c), see p. 22, *infra*.

[19] Section 2 of the Act of October 2, 1942, see p. 23, *infra*.

[20] Section 7(c) of the Act of October 2, 1942, see p. 23, *infra*.

1 of the October Act, giving the President certain powers over "prices, wages and salaries", in some way applied to utility rates. But the Price Control Act defined "prices" and in the definition specifically excluded utility rates. (Sec. 302(c).) So Petitioners have apparently abandoned that contention.

Petitioners say (Pet. 15) that "preoccupation with an antecedent formula cannot form the measure of the Commission's duties", referring to the sliding scale arrangement. This is an insinuation without foundation. As the Court of Appeals pointed out, the Commission did not approve the increase required by the sliding scale arrangement (R II, 438). Its own staff testified that under the sliding scale arrangement the Company was entitled to an increase of $325,000, but the Commission allowed only a $201,000 increase. It allowed only the increase necessitated by its findings as to the credit position of the Company and the need for the financing of its wartime construction programs.

Question 5—Items of Expense.

This question (Pet. 3-4) relates to two items of expense, income taxes and depreciation.[21]

In respect to taxes, Petitioners say (Pet. 17) that "the Commission was under a duty to disallow all income taxes above those levied at peacetime rates". They do not suggest the source of the "duty", and cannot do so because neither statute nor court decision has imposed such a duty. But, even so, the Commission in this case did disallow all income taxes above peacetime rates. Although the corporate tax rate for 1942, our first war year, was 40 per cent,

[21] Petitioner's contention under this question with respect to depreciation seems to be set forth at page 12 of the Petition (cf. Pet. 20 with Pet. 12). We have discussed this contention elsewhere (see p. 13, *supra*).

the Commission allowed a deduction of only 31 per cent, the tax rate for 1941. What do the Petitioners mean by "peacetime" rates? Do they mean prior to 1939, or do they mean the probable tax rates in the peacetime after the war? They do not particularize their question, because any particularization would imperil the principle upon which they and the Commission agree. Petitioners do not quarrel with the principle adopted by the Commission at their insistence. They merely dispute the finding as to the resultant amount.

CONCLUSION.

No question of general importance or of substance is presented by the Petition on the record in this case. The particulars in which the hearing is alleged to have been not full and fair involve no more than the expert regulatory judgment of the Commission upon a request that the issues in the case be expanded, no probable public benefit being indicated by the proponents, and no proof being proffered to support the request. As the Court of Appeals said: "What he (the Administrator) desired was an indefinite postponement of any increase in rates pending an exploratory investigation by the Commission in which he was willing to assist as best he could." (R. II, 441.)

The judgment of the Commission gave recognition to war expansion necessities and to credit needs. The Commission and the Court of Appeals thought these considerations adequate support for the token increase which was granted. The findings were supported by convincing evidence.

Although Petitioners pose general questions in the earlier sections of the Petition, later sections show that their real quarrel is merely with the conclusions of the Commission in the exercise of its regulatory judgment, weighing conflicting factors one against the other. Such questions are of no general importance or of such substance as to

require review by this Court. This Court is not called upon to review the entire record as if on appeal.

The petition for writ of certiorari should be denied.

Respectfully submitted,

E. Barrett Prettyman
Stoddard M. Stevens, Jr.
F. G. Awalt
C. Oscar Berry
Raymond Sparks
Attorneys for Respondent
Washington Gas Light Company.

October, 1943.

APPENDIX.

Section 1 of the Act of October 2, 1942, c. 578, 56 Stat. 765, 50 U. S. C. (App.), Supp. II, Section 961, reads as follows:

> "That in order to aid in the effective prosecution of the war, the President is authorized and directed, on or before November 1, 1942, to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living; and, except as otherwise provided in this Act, such stabilization shall so far as practicable be on the basis of the levels which existed on September 15, 1942. The President may, except as otherwise provided in this Act, thereafter provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effectlve prosecution of the war or to correct gross inequities: *Provided, That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days' notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase.*" (Italics supplied.)

Section 302(c)(1-5) of the Emergency Price Control Act of January 30, 1942, 56 Stat. 23, 50 U. S. C. (App.), Supp. II, § 942 (c)(1-5), reads as follows:

> "(c) The term 'commodity' means commodities, articles, products, and materials (except materials furnished for publication by any press association or feature service, books, magazines, motion pictures, periodicals and newspapers, other than as waste or scrap), and it also includes services rendered otherwise than as an employee in connection with the processing, distribution, storage, installation, repair, or negotiation of purchases or sales of a commodity, or in connection with the operation of any service establishment for the servicing of a commodity: *Provided, That nothing in this Act shall be construed to authorize the regulation of* (1) compensation

paid by an employer to any of his employees, or (2) *rates charged by any common carrier or other public utility*, or (3) rates charged by any person engaged in the business of selling or underwriting insurance, or (4) rates charged by any person engaged in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio-broadcasting station, a motion-picture or other theater enterprise, or outdoor advertising facilities, or (5) rates charged for any professional services." (Italics ours.)

Sections 2 and 7 of the Act of October 2, 1942, c. 578, 56 Stat. 765, 50 U. S. C. (App.), Supp. II, §§ 962 and 967 read, in pertinent part:

"SEC. 2. The President may, from time to time, promulgate such regulations as may be necessary and proper to carry out any of the provisions of this Act; and may exercise any power or authority conferred upon him by this Act through such department, agency, or officer as he shall direct. The President may suspend the provisions of sections 3(a) and 3(c), and clause (1) of section 302(c), of the Emergency Price Control Act of 1942 to the extent that such sections are inconsistent with the provisions of this Act, but he may not under the authority of this Act suspend any other law or part thereof."

* * * * * * * * * *

"SEC. 7. . . . (c) Nothing in this Act shall be construed to invalidate any provision of the Emergency Price Control Act of 1942 (except to the extent that such provisions are suspended under authority of section (2), or to invalidate any regulation, price schedule, or order issued or effective under this Act."

D. C. Code (1940) §§43-305, 43-306, 43-317, provide as follows:

§ 43-305.—The commission shall ascertain, as soon and as nearly as practicable, the amount of money expended in the construction and equipment of every public utility, including the amount of money expended to procure any right of way; also the amount of money

it would require to secure the right of way, reconstruct any roadbed, track, depots, cars, conduits, subways, poles, wires, switchboards, exchanges, offices, works, storage plants, power plants, machinery, and any other property or instrument not included in the foregoing enumeration used in or useful to the business of such public utility, and to replace all the physical properties belonging to the public utility. It shall ascertain the outstanding stock, bonds, debentures, and indebtedness, and the amount, respectively, thereof, the date when issued, to whom issued, to whom sold, the price paid in cash, property, or labor therefor, what disposition was made of the proceeds, by whom the indebtedness is held, so far as ascertainable, the amount purporting to be due thereon, the floating indebtedness of the public utility, the credits due the public utility, other property on hand belonging to it, the judicial or other sales of said public utility, its property or franchises, and the amounts purporting to have been paid, and in what manner paid therefor, and the taxes paid thereon. The commission shall also ascertain in detail the gross and net income of the public utility from all sources, the amounts paid for salaries to officers and the wages paid to its employees, and the maximum hours of continuous service required of each class. Whenever the information required by this section is obtained it shall be printed in the annual report of the commission. In making such investigation the commission may avail itself of any information in possession of any department of the government of the United States or of the commissioners of the District of Columbia. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 6.)

§ 43-306.—The commission shall value the property of every public utility within the District of Columbia actually used and useful for the convenience of the public at the fair value thereof at the time of said valuation. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 7.)

§ 43-317.—Nothing in chapters 1-10 of this title shall be taken to prohibit a public utility, with the consent of the commission, from providing a sliding scale of rates and dividends according to what is commonly known as the Boston sliding scale, or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device

shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purposes of chapters 1-10 of this title. Such arrangement shall be under the supervision and regulation of the commission. The commission shall ascertain, determine, and order such rates, charges, and regulations, and the duration thereof, as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges, and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to alter or amend all orders relative thereto, is reserved and vested in the commission notwithstanding any such arrangement and mutual agreement. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 18.)

The pertinent provisions of Executive Order No. 9250 (7 Fed. Reg. 7871), promulgated on October 3, 1942, reads as follows:

By virtue of the authority vested in me by the Constitution and the Statutes, and particularly by the Act of October 2, 1943, entitled 'An Act to Amend the Emergency Price Control Act of 1942, to Aid in Preventing Inflation, and for Other Purposes,' as President of the United States and Commander in Chief of the Army and Navy, and in order to control so far as possible the inflationary tendencies and the vast dislocations attendant thereon which threaten our military effort and our domestic economic structure, and for the more effective prosecution of the war, it is hereby ordered as follows:

TITLE I—ESTABLISHMENT OF AN OFFICE OF ECONOMIC STABILIZATION

1. There is established in the Office for Emergency Management of the Executive Office of the President an Office of Economic Stabilization at the head of which shall be an Economic Stabilization Director (hereinafter referred to as the Director).

. . . . . .

TITLE VI—GENERAL PROVISIONS.

* * * * * * * * *

4. The Director shall be the agency to receive notice of any increase in the rates or charges of common carriers or other public utilities as provided in the aforesaid Act of October 2, 1942.

* * * * * * * * *"

Resume of Legislative History of the Proviso to Section 1 of the Act of October 2, 1942.

The Act of October 2, 1942, is the result of legislation introduced in the House and Senate in September, 1942. The Senate legislation was introduced on September 14, 1942, by Senator Brown as S. J. 161, 77th Cong. 2d Sess. (88 Cong. Rec. 7361), and the House legislation was introduced by Mr. Steagall on September 21, 1942 as H. R. 7565, 77th Cong., 2d Sess. (*idem*, p. 7477). Insofar as the legislative history of the proviso of Section 1 of the Act is concerned, the progress of H. R. 7565 is of no moment until it was amended in the Senate on September 30, 1942, by the substitution (*idem*, pp. 7899-7901) of the language S. J. 161 as it had been amended by the Senate on that date for the language of H. R. 7565 as it had passed the House on September 23, 1942 (*idem*, p. 7635); for it was not until then that the latter legislation contained any reference to public utility rates. Similarly, the legislative progress of S. J. 161 sheds no light on the legislative history of the proviso until Senator Norris, on September 30, 1942 (*idem*, pp. 7876-7877), introduced an amendment to that legislation which was the forerunner to the proviso as it was finally enacted.

On September 30, 1943, Senator Norris offered an amendment from the floor (*idem*, pp. 7876-7877) under the terms of which, after a slight modification from the floor (*idem*, p. 7878), Sec. 1 of S. J. 161, as it then stood, would be supplemented with the following proviso:

"*Provided*, That rates charged by any common carrier or other public utility on September 15, 1942, shall

not be increased without the consent of the President: *Provided further*, That nothing in this section shall be construed as affecting the power or authority of any Federal, State, or municipal authority or agency to reduce prices, rates, or charges subject to its jurisdiction, or to equalize the rates and charges of common carriers."

This amendment[22] was adopted by the Senator (*idem*, p. 7878).

Later on that same day—September 30, 1942—Senator Brown moved (*idem*, p. 7899) that the Senate amend H. R. 7565 as it passed the House by striking out everything therein after the enacting clause and inserting in lieu thereof the text of S. J. 161 amended. This amendment which carried with it Senator Norris' Amendment in the form quoted above, was agreed to (*idem*, p. 7899), and H. R. 7565 as thus amended, passed the Senate (*idem.*, pp. 7900-7901).[23]

Thereafter the Senator asked the House for a conference on H. R. 7565 as it was passed by the Senate (*idem*, p. 7901) and this was agreed to by the House on October 2, 1942 (*idem*, p. 7981). As a result of the conference, conferees on the part of the House (H. Rept. 2513, 77th Cong. 2d Sess.; 88 Cong. Rec. 7986-7987) and on the part of the Senate (88 Cong. Rec. 7969-7970) reported the bill in the form in which it was enacted into law as the Act of October 2, 1942 (*idem*, pp. 7979, 7992).

---

[22] In line with Senator Norris' Amendment, the Senate, upon Senator Brown's motion, amended (88 Cong. Rec. 7881) Section 2 of S. J. 161 as it then stood to provide that the President could suspend clause 2 of Section 302(c) of the Emergency Price Control Act, which provided: "... nothing in this Act shall be construed to authorize the regulation of .... (2) rates charged by any common carrier or other public utility; ..."

[23] Section 2 of the bill, after the amendment, read in part as follows (88 Cong. Rec. 7900): "The President may suspend the provisions of ... clause 1 and *2 of Section 302 (c)* of the Emergency Price Control Act of 1942 to the extent that such sections are inconsistent with the provisions of this Act, but he may not under the authority of this Act suspend any other law or part thereof." (Italics supplied.)

So far as concerns proviso to Section 1 of the Act, this means, of course, that the proviso was changed in conference from the language in which it, as Senator Norris' amendment, had passed the Senate (see p. 26, *supra*) to the language appearing in the Act (see p. 22, *supra*).[24] The reason for the change in the language of the proviso to Section 1 and the effect of the language adopted was the subject of a somewhat lengthy discussion on the floor of the Senate after Senator Brown, a co-sponsor of S. J. 161 and a conferee for the Senate on H. R. 7565, had submitted the conference report to the Senate.[25] The pertinent part of this discussion, which was led by Senators Brown and Norris, reads as follows:

> "Mr. Brown. Mr. President, section 1 of the conference report follows section 1 of the Senate bill; in fact, I can say that very generally the conferees adopted the Senate bill with some slight modifications. The principal change in section 1 is that the Norris amendment which gave the President an all-over control of public-utility and common-carrier rates is stricken from the bill. There is substituted for it a provision which will require any public utility which asks for an increase in rates to notify the President and to assent to the appearance of such agent as the President may designate to appear in behalf of the consuming public before the appropriate railroad or public utility commission, be it a State, Federal, or municipal commission. (88 Cong. Rec. 7970.)
>
> * * * * * * * * *
>
> "It was felt by the House conferees that inadequate consideration had been given to the general subject matter, and they were unwilling to accept the Senate amendment. They were unanimous in their views;

[24] Also in conference, the power given to the President in Section 2 of H. R. 7565 (as amended in the Senate) to suspend Clause 2 of Section 302(c) of the Emergency Price Control Act (see n. 23, *supra*) was removed (cf. Section 2 of the Inflation Control Act, p. 23, *supra*).

[25] The House debate on the proviso (88 Cong. Rec. 7980, 7990, 7991), is meager and of no particular value.

and it was impossible for us to persuade them to accept the Norris amendment. However, the conferees did make the arrangement which I have indicated and which was entered into after some consultation with the senior Senator from Nebraska. We told him we thought this was the best we could get on this subject matter. (*Idem*, p. 7971.)

* * * * * * * * * *

"Mr. Norris. Mr. President, I wish to refer to the action of the conference committee in including in the conference bill the language which the Senator from Michigan read and which takes the place of the amendment offered by me when the measure was before the Senate for consideration. It relates to utility rates and charges.

"What has been substituted by the Conference Committee for the original language agreed to by the Senate does not, technically, afford any relief whatever, although, morally, I think it will result in considerable relief.

"I intend to vote for the conference report, but I wish to call attention to the legal effect, as I understand it, of the language which has been substituted.

"The committee has provided that no utility rate shall be increased unless 30 days' notice shall be given the President by the corporation seeking the increase. There is also the requirement that in the notice it shall be agreed that the President may have the right, through any instrumentality he may select, to appear before the body having jurisdiction of the rate. I think I have stated the legal effect correctly.

"Mr. Brown. The Senator has stated it correctly.

"Mr. Norris. That does not give the President any right to pass on the question. It does not give him any right to appeal in case the Board's decision is against his representative's ideas.

"Mr. Brown. I would not be sure, if the Senator will pardon me, that his last statement is in accord with my own views. I think he would have the same right to appeal that any other interested party would have.

"Mr. Norris. I did not look at it that way. If he would have that right, it would add a great deal to the

legal effect of the language which has been placed in the measure.

"Mr. Brown. He becomes a party to the proceedings, that is, his agent does.

"Mr. Norris. Yes, he does. The Senator's idea is that if under the law and the rules and regulations of the body having jurisdiction to hear the complaint, or the request, as it would be, an appeal is provided for, the President could avail himself of that right of appeal.

"Mr. Brown. Yes.

"Mr. Norris. I hope that will be the construction placed upon the language.

"Mr. Bone. Mr. President, will the Senator yield?

"Mr. Brown. I yield.

"Mr. Bone. I am assuming in asking the question that even though the President's representative would be technically a party in an appeal, he would merely have the right formally to present his views, or the views of the administration, to the regulatory body, but he would have nothing to say about its decision. If its decision were that the increase in rates should be granted, the decision would be final.

"Mr. Norris. If the Senator from Michigan has the correct idea, the President or his representative would have the right to appeal, as any party to the dispute would have the right to appeal.

"Mr. Brown. But with absolutely no authority to participate in the decision.

"Mr. Norris. No; with no authority to participate in the decision.

"Mr. Bone. That is what I meant by my question.

"Mr. Norris. As I said, I think that would have a great moral effect. The only thing the President's representative could plead for or urge when he appeared at the hearing would be that if the body then hearing the dispute should increase the rate, it would very likely interfere with all that the Price Administrator had done in the fixing of prices, because no one will dispute the utility rates enter directly into the cost of living. If gas rates, or electric rates, or water rates, or freight rates, or streetcar rates are increased, every single item of increase goes directly into the cost of living and hence interferes with any attempt to prevent inflation. After all, that is why I am deeply interested in this proposi-

tion; I want to prevent inflation, if possible. That is the object of our giving someone the authority to fix prices and freeze them at a certain level. If any persons or corporations have the power to increase any item of the cost of living, and it is done contrary to the order of the President or the Price Administrator, it will tend directly to overthrow the prices so fixed and will throw the whole structure out of gear, thus tending to increase the cost of living, and making it necessary to increase all other prices which enter into the cost of living, with the result that, as I believe, inflation will follow immediately.

"There would be a moral effect, however. When the President's representative appears before the tribunal having jurisdiction to fix or increase utility rates, he could say—and that is about all he could do—that if the requested increase were granted, it would tend to increase the cost of living, and hence throw out of gear the entire machinery designed to prevent inflation. If the tribunal increased utility rates during the war, notwithstanding the kind of showing made by the President's representative, it would in my judgment have a great effect upon public sentiment. The tribunal board, or commission which acted to increase rates, in the face of a showing that such action might lead to the worst kind of inflation, would find itself in a position which no board would want to be in. I think the provision in question will have a great moral effect. Therefore, I myself feel disposed to accept this language and vote for the conference report.

"Mr. President, I think I realize as fully as does any other Senator the earnestness, the fidelity, and the good faith with which the conferees on the part of the Senate have labored. We are all anxious to get through with this measure, and I think we should all be willing to sacrifice something we believe ought to be in the measure in order to have it finally passed. For that reason I do not believe we are justified in rejecting the conference report simply because in some particular it has not met completely with our ideas." (*Idem*, pp. 7973-7974.)